

Honorable James L. Robart

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

VHT, INC., a Delaware corporation,
Plaintiffs,

V.

ZILLOW GROUP, INC., a Washington corporation; and ZILLOW, INC., a Washington corporation,

Defendant(s).

Case No. 2:15-cv-01096-JLR

**DEFENDANT ZILLOW'S NOTICE OF
MATTERS FOR CONSIDERATION
BEFORE OPENING STATEMENTS**

Defendant Zillow provides the Court with this notice of evidentiary matters that Zillow believes may need to be addressed prior to the time that the parties deliver their opening statements in the above-captioned case. During the final pretrial conference, the Court noted that objections during opening statements are disfavored. For that reason, Zillow raises these issues in advance. The parties have discussed each of these issues during meet and confer sessions, but have been unable to reach agreement.

Zillow seeks to preclude reference to the following evidence during VHT's opening and to preclude or limit the introduction and use of this evidence at trial:

1 (1) Zillow's decision to begin taking down images in response to notices from VHT in mid-
2 2016. Such evidence should be excluded as unduly prejudicial under FRE 403 and as a
3 subsequent remedial measure under FRE 407.

4 (2) Any claimed "failure" by Zillow to produce information in discovery, including infor-
5 mation about dates images were displayed, blog posts, and advertisements.

6 (3) Third-party copyright complaints against Zillow and related settlements. At the pretrial
7 conference the Court directed the parties to attempt to reach agreement on the use of this
8 information, but they have been unable to do so. *See* Zillow's Motions in Limine, Dkt.
9 195 at 7-9; VHT's response, Dkt. 206 at 9-14; and Zillow's Trial Brief, Dkt. 232 at 18-
10 19.

11 In addition to raising objections to these items of evidence or arguments, Zillow also notes
12 that the parties have failed to reach agreement on the time for the exchange of exhibits to be used
13 during witness examinations. Zillow has proposed a mutual exchange time of 8:00 PM the night
14 before each respective examination. VHT does not wish to exchange exhibits in advance of wit-
15 ness examinations.

16 Dated: January 22, 2017.

17 Respectfully submitted,

18 By: /s/ Edgar G. Sargent

19 Edgar G. Sargent, WA Bar # 28283

20 esargent@susmangodfrey.com

21 Ian Bradford Crosby, WA Bar # 28461

22 icrosby@susmangodfrey.com

23 Genevieve Vose Wallace, WA Bar # 38422

24 E-Mail: gwallace@susmangodfrey.com

Jordan Connors, WA Bar # 41649
E-Mail: jconnors@SusmanGodfrey.com
Jenna Farleigh, WA Bar # 47392
E-Mail: jfarleigh@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1201 Third Avenue, Suite 3800
Seattle, WA 98101
Telephone: (206) 516-3880
Facsimile: (206) 516-3883

Attorneys for Zillow Group, Inc. and Zillow, Inc.

1
2 **CERTIFICATE OF SERVICE**
3
4

I hereby certify that on January 22, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

5 /s/ Edgar G. Sargent
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27